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*Interim co-lead counsel for plaintiffs and the proposed class*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In re SONY VAIO COMPUTER  
NOTEBOOK TRACKPAD  
LITIGATION

Civil No. 09-CV-2109-BEN-RBB

**CONSOLIDATED CLASS ACTION  
COMPLAINT FOR DAMAGES  
AND EQUITABLE RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Ronald Flynn and Christina Egner, individually and on behalf of all  
2 others similarly situated, through their counsel, allege the following upon personal  
3 knowledge as to their own acts and upon information and belief as to all other  
4 matters.  
5

## 6 NATURE OF THE ACTION

7 1. Plaintiffs bring this action against defendant Sony Electronics, Inc.  
8 (“Sony”) and against Best Buy Co., Inc. (“Best Buy”), on behalf of themselves and all  
9 others similarly situated who purchased defective notebook computers  
10 manufactured by Sony and sold under the VAIO brand name (“VAIO Notebooks”) during the period January 1, 2007 through the present (the “Class Period”).  
11  
12

13 2. During the Class Period, Sony manufactured, marketed and sold VAIO  
14 Notebooks with defective trackpad input devices. The Sony VAIO Notebooks are  
15 defectively designed and manufactured because the trackpad component can cause  
16 the onscreen cursor to: (a) track in reverse, *e.g.* the cursor moves in a direction  
17 opposite to the user’s input; (b) freeze or fail to register user input; or (c) engage in  
18 erratic behavior, *e.g.* randomly open and close windows and programs (the “Defect”).  
19 Some users report system lockup and total failure.  
20

21 3. The Defect is frustrating to purchasers of Sony’s expensive VAIO line,  
22 and the Defect renders the VAIO Notebooks useless for their intended purpose of  
23 mobile computing. Because computer operating systems use and rely on a  
24 “graphical user interface,” *i.e.* visual windows, folders and files that can be moved  
25 and accessed with trackpad movements and clicks, this defect eliminates access to  
26 nearly everything on the Sony VAIO Notebook.  
27  
28

4. Defendants should have known about the Defect in the VAIO Notebooks because of numerous consumer complaints to Sony and the hundreds of consumer complaints lodged with technical and computing websites. Yet, Sony has remained silent about the Defect while consumers continue to purchase VAIO Notebooks. Had plaintiffs and other class members known of the Defect, they would not have purchased a Sony VAIO Notebook.

5. In particular, Sony represented to plaintiffs and class members the VAIO Notebooks are the perfect mobile computing solution. Sony promised consumers its VAIO line would deliver “uncompromised performance,” and Sony said its computers deliver “the best experience possible.” As explained on Sony’s “SonyStyle” website, “[w]hether you’re a traveling executive or a creative professional that needs constant access to your media.” Similarly, Best Buy represented the Sony VAIO line as one of its flagship portable notebook solutions for consumers.

6. Sony has failed to recall the defective VAIO Notebooks, amend applicable warranties or reimburse consumers for the cost of repairing or replacing their Sony VAIO Notebooks. Sony's inaction has improperly passed the expense of repairing or replacing the VAIO Notebooks along to plaintiffs and to other class members who unknowingly purchased defective VAIO Notebooks.

## PARTIES

7. Plaintiff Ronald Flynn, an individual, is a citizen of the State of Florida. During the Class Period, Mr. Flynn purchased a Sony VAIO VGN-SZ650N notebook computer from defendant Best Buy, which subsequently malfunctioned

1 due to the Defect. Mr. Flynn purchased the Sony notebook computer for mobile  
2 computing and purchased a Best Buy extended warranty, paying \$2,518.76.

3 8. Plaintiff Christina Egner, an individual, is a citizen of the State of New  
4 Jersey. During the Class Period, Ms. Egner purchased a Sony VAIO VGN-  
5 NW240F/P 15.5 inch notebook computer from defendant Best Buy, which  
6 subsequently malfunctioned due to the Defect, and purchased a Best Buy warranty,  
7 paying \$995.96.  
8

9 9. Defendant Sony Electronics, Inc., is a corporation that is incorporated  
10 under the laws of the State of Delaware. Sony has its principal place of business in  
11 San Diego, California. Defendant may be served with process through its registered  
12 agent, CSC – Lawyers Incorporating Service, at 2730 Gateway Oaks Dr., Suite 100,  
13 Sacramento, California 95833. Sony’s Information Technology Products Division  
14 manufactures, markets and sells VAIO brand computers, including the defective  
15 VAIO Notebooks at issue.  
16  
17

18 10. Defendant Best Buy Co., Inc., is a corporation that is incorporated  
19 under the laws of the State of Minnesota. Best Buy has its principal place of  
20 business in Richfield, Minnesota. Defendant is authorized to do business in the  
21 State of California and may be served with process through its registered agent, CT  
22 Corporation System at 818 West Seventh St., Los Angeles, California 90017.  
23

## 24 JURISDICTION AND VENUE

25 11. The Court has jurisdiction over the lawsuit under 28 U.S.C. §  
26 1332(a)(1) because plaintiffs and defendants are citizens of different states and the  
27 amount in controversy exceeds \$75,000, excluding interest and costs. The Court also  
28

1 has jurisdiction under 28 U.S.C. § 1332(d), the class Action Fairness Act, because  
2 the suit is a class action, the parties are minimally diverse, and the amount in  
3 controversy exceeds \$5,000,000, excluding interest and costs.  
4

5 12. Venue is proper in this district under 28 U.S.C. § 1391(a)(1) and (a)(2)  
6 because Sony resides in this district and a substantial part of the events or  
7 omissions giving rise to this claim occurred in this district.

## 8 **FACTUAL ALLEGATIONS**

9 13. Since the 1940s Sony has designed, manufactured, marketed,  
10 distributed and sold audio, video, communication, and information technology  
11 products through its own retail—and more recently its online—stores, direct sales,  
12 third party wholesalers and resellers. “VAIO” is a brand name for Sony’s computer  
13 products, including its notebooks, subnotebooks, desktop and media computers.  
14

15 14. Sony manufactures, markets and sells notebook computers under the  
16 Sony VAIO brand name. Sony markets its VAIO notebook computers as a premium  
17 brand. Among its VAIO products are Sony’s defective VAIO Notebooks, including its  
18 series SZ, TZ, FZ and TT notebooks.  
19

20 15. Notebook computers are designed and marketed for mobility and  
21 convenience. Sony’s public website, whose target audience is the consuming public  
22 and the class, says Sony “build[s] better PCs to deliver the best experience possible.”  
23 For example, concerning the VAIO SZ series, in January 2008 Sony told consumers  
24 on its website the SZ series delivers “uncompromised performance.”  
25

26 16. Sony tells consumers, directly, its “VAIO notebook and desktop PCs  
27 are built with quality components and engineered for lasting reliability.” Sony says  
28

1 on its website, “VAIO owners have Sony Certified Technicians behind them to help  
2 ensure that their PC provides them with the best possible computing experience.”

3  
4 *Image From Sony’s Website*

## 5 Upgrade, Maintenance & Repair

6 VAIO notebook and desktop PCs are built with quality components and  
7 engineered for lasting reliability. Over time, however, you might need some  
8 extra services. Fortunately VAIO owners have Sony Certified Technicians  
9 behind them to help ensure that their PC provides them with the best  
10 possible computing experience.

11 17. Sony also says its VAIO Notebooks provide:

12 Maximum mobility. Take it all with you. Whether you’re a traveling  
13 executive or a creative professional that needs constant access to your  
14 media, VAIO has a solution. Weighing as little as 1.4 pounds with  
15 beautiful widescreen displays that maximize workspace, there’s a  
16 VAIO notebook that’s perfect for you.

17 18. Contrary to its advertisements, the defective VAIO Notebooks do not  
18 provide “the best experience possible,” “uncompromised performance,” or “constant  
19 access to your media.” And as discussed herein, neither Sony nor Best Buy were  
20 able to fix the defective VAIO Notebooks. Instead Sony’s defective VAIO Notebooks,  
21 because of their demonstrably defective trackpads, cause user input errors, freezing,  
22 the cursor behaves erratically, moves in direction opposite to user inputs, and even  
23 locks up the system.

24 19. Because computer operating systems like Sony’s VAIO line use and  
25 rely on a “graphical user interface,” *i.e.* visual windows, folders and files that can be  
26 moved and accessed with trackpad movements and clicks, the crippling trackpad  
27 Defect eliminates access to nearly everything on the Sony VAIO Notebook.  
28

1           20. Sony sells its VAIO Notebooks directly and through retailers  
2 nationwide, including national chains (e.g. Best Buy), retail stores, wholesale  
3 membership clubs (e.g. Sam's Club, Costco), and online retailers. The retail price for  
4 these VAIO Notebooks generally ranges from between \$700-\$3,700, depending on  
5 the model.  
6

7           21. The VAIO Notebooks are defective because the trackpad input device  
8 can cause the onscreen cursor to: (a) track in reverse, resulting in the cursor moving  
9 in a direction opposite to the user's input; (b) freeze or fail to respond to user's  
10 trackpad inputs; or (c) engage in erratic behavior, such as randomly opening and  
11 closing windows and programs. Users also report total system failure or lockup,  
12 rendering the VAIO Notebooks inoperable.  
13

14 **Consumer Complaints Concerning Sony's Defective VAIO Notebooks**

15           22. As the manufacturer, marketer and seller of VAIO Notebooks, Sony  
16 possesses specialized knowledge about the composition of its notebooks and  
17 component parts and is in a superior position to know and learn about potential  
18 defects. As evidenced by the many purchasers of the defective VAIO Notebooks who  
19 have gone through the trouble of calling Sony and visiting online forums to  
20 complain about the Defect, Sony had notice of this Defect.  
21  
22

23           23. Hundreds of consumer complaints about the Defect in the VAIO  
24 Notebooks are posted on consumer websites, including CNET.com. The complaints  
25 reflect the early and continued manifestation of the Defect, unexpected repair costs  
26 and Sony's refusal to take responsibility for the Defect, as these samples show:  
27  
28

Date	Comments
June 16, 2007	<p>Sony vaio, touchpad behaving badly?</p> <p>I have a Sony vaio SZ48, it is 4 months old, it came pre-loaded with vista business - Recently I have noticed that if I am using a USB mouse, things seem fine, but if I am using the touchpad, the cursor on the screen seems to move in the total opposite direction to what I want...That is, if I scroll up, it goes down.. if I scroll right, it goes left ?</p> <p>Has anybody else had this issue? Any solutions? Please help.. thank you.</p>
June 28, 2007	<p>Problem with SONY VGN-SZ360P touchpad</p> <p>Hey bro, don't mean to scare you, bro, but I have a 6 months old Vaio SZ360 and it started doing this up/down right/left switch a couple of months ago: I called Sony support, and made all the steps they talk me to do, like resetting the damn thing, reinstalling everything from scratch, and the problem persists. So, after some time, it began to get worst, going ballistic in my screen, hitting buttons I didn't press. A month ago, the touchpad decided to stop working. Now it is plain dead. Nothing. I have to buy this ridiculous external usb mouse to make this 2,499 piece of equipment to work. It is absurd and we are not alone. I've seen reports by the dozen of Sony vaio angry users about this stupid ALPS touchpad...</p>
Aug. 30, 2007	<p>Jumping to previous web pages? Touchpad issue?</p> <p>I just got a new Sony VAIO FZ190, and when I am online, the thing jumps to the previous web page! I thought I was insane, but I see now that this is a touchpad issue that might not be resolvable? Is this correct? I called Sony support this morning and got pretty cranky when the guy said I had to make some changes in the BIOS or something. The first time I turned on the machine the CD drive wouldn't read CDs! Guess I should have kept that MacBook.</p>



Date	Comments
Oct. 8, 2007	<p>Sony Vaio touchpad model: VGN-SZ360P</p> <p>I purchased my Sony Vaio in April 2007. Within six months of purchasing it, I have already had to replace the touchpad twice. It is now malfunctioning again. I am very disappointed in this product. It is the worst experience I have had with a laptop. I will not purchase a Sony again unless the company resolves this issue to my satisfaction.</p>
Jan. 16, 2008	<p>Sony Vaio - touchpad problems - contact the Chairman of Sony</p> <p>I have a Sony Vaio VGN9Z120P notebook computer. Within the one year warranty the cursor began operating in the reverse direction to which you moved the touchpad, making it almost impossible to use. Repeatedly rebooting the computer would eventually correct the problem. I complained to Sony on four occasions and spent hours on the phone with them - getting passed from the Philippines to their support Stateside. We reloaded the touchpad/mouse software and installed upgrades, none of which worked. I was told it was caused by static buildup and told to unplug the AC adaptor when not in use. None of this worked. I was told if I reinstalled the operating system this should fix it and told that if it didn't they would send me a new one. I reinstalled the operating system at a cost of over \$300.00 and countless hours of time in backing up and restoring programs. It did not fix the problem and it came back in weeks. Eventually I was outside the warranty period and then the Sony support help became rude and hostile and told me to return the laptop at my expense and they would look at it. They refused to send me a new one. I now see from the posts on this site that backing up my data again and sending the notebook to them and being without it for weeks if not months is likely a complete waste of time and money. The problem has now become progressively worse and I am now compelled to use a USB mouse since the touchpad is basically useless. [ ]. I thought I was alone with this problem since Sony claimed they had never heard of it. Now I have discovered this site and found I am not alone. If we all pressure Sony one would think that they might do the right thing [ ].</p>

Date	Comments
Mar. 13, 2008	<p>Inconsistent manifestation of faults is the norm</p> <p>For what it's worth: I think the nature of this fault appears to manifest itself in a number of different ways - and in a quite unpredictable manner. Even now, I occasionally boot up and find that the touchpad is working normally. Mostly this lasts for only a few seconds or a few minutes but on one or two occasions, it has lasted several hours before suddenly freezing again. Moreover, other manifestations of the fault show up through different inconsistencies: sometimes the fingerprint reader is flagged as defective; other times, the whole computer just freezes up. There is no consistent pattern in the fault - other than the fact that in my case, at least, the touchpad simply doesn't work at all for about 97% of the time - or spends the first few seconds in the well-documented skipping between different windows and drop-down menus etc etc before eventually freezing up again. In my view, this is a good indication that the fault is essentially one of software/driver incompatibility. Good luck with your latest developments. But I wouldn't get your hopes up....</p>
Mar. 1, 2009	<p>Sony Vaio VGN-SZ340 touchpad not working</p> <p>I have the same problem and since today is Sunday I was only able to chat with 2 of Sony's support tech and I've tried everything they said to do and nothing works. I've had the same problems with the touchpad going crazy on me and closing my opened programs and the backwards scrolls. I usually pressed escape and it would go away, but recently my touchpad would just stop working and I would have to restart my computer one or two times in order for it to start working. Today though it just completely stopped working even after restarting it numerous times. I checked the mouse properties and the hardware was completely gone. I tried everything from downloading the touchpad drives to restoring the touchpad, restoring points and nothing worked. It wasn't until I searched online that I found out that many other people were having the same issue. I truly expected so much more from Sony and I am now totally disappointed. [ ] It sucks because I paid so much for this computer. I emailed their support complaining . . .</p>

Date	Comments
Mar. 25, 2009	<p>Old VAIO with jerky mouse and unresponsive keyboard.</p> <p>I have a Vaio VGN-NR110E that is about 15 months old and I am ready to toss it in the garbage but thought I would check online before I give in, since Sony has not been helpful at all. I do not have the reversing problem but the cursor jumps around in text ALL THE TIME (it has done it twice already in this message, and since I am not much of a typist and must look at the keyboard not the screen I don't usually realize until I have inserted several words in the middle of what I am typing, so then I have to delete them) The other thing it does ALL THE TIME is randomly go back to the previous webpage, causing me to lose whatever I was typing. On my web based work email this has caused me to lose long messages I was typing many times. Amazingly when I have called Sony support each time I have been told there is no known problem with the touchpad or cursor, yet I found hundreds of sites with the issues mentioned. I have tried a few things but never tried taping the touchpad - I think it is the main problem because even if I don't touch it while typing it causes these problems just if I even hover over it, it seems.</p>

Date	Comments
Mar. 29, 2009	<p>Replaced touchpad has problems . . .</p> <p>Just to reiterate what everyone here is saying, and add my own story - I also purchased my Sony Vaio SZ740 less than a year ago. After two months, I experienced the reverse-touchpad problem - reset the computer to factory standards (costing weeks of time to get it back to how it was initially, of course), installed all the drivers, spent hours on the phone with customer service, etc. and FINALLY, when I emailed SonyListens@am.sony.com, I got a reply and someone came out to my office and installed a brand new touchpad for free, <i>and told me they have long since known that it's a problem with the touchpad hardware</i>, NOT any of the software or drivers.. uh-hu - that could have saved me a ton of hassle if they had just been up front!</p> <p>Anyway, at the time I thought it was pretty good customer service, and I was satisfied. However, it's now been about 6 months later, and my cursor is now erratic, moving all over the place and opening and closing windows like what many of you are reporting. I called again, and am getting the same run-around with installing drivers, etc. although I have to think that it's something to do with the very design of the touchpad and replacing it with another of the same won't help... I also have "solved" the problem by using a usb mouse, but am ridiculously frustrated, and concerned that my warranty will be up in a month and then I will really be screwed.</p> <p>So, a word of advice to those of you who are thinking of getting a sony - don't. For those of us who already have, mmmm. here's to better luck (and better brands) next time!</p>

(edited for readability)

24. Along with the above complaints, on August 15, 2008, an individual purportedly from Sony's technical support group posted: [E52GTerry] "Hello, I work for Sony Electronics and am responsible for resolving issues such as these. If you

1 contact me at [sonylistens@am.sony.com](mailto:sonylistens@am.sony.com) I can assure you that you will receive  
2 immediate attention and support.” It is clear, however, from subsequent postings on  
3 CNET.com and numerous other websites, Sony failed to take action to remedy the  
4 Defect in its VAIO Notebooks.  
5

6 25. To ensure its VAIO Notebooks would be fit for their intended use, *i.e.*,  
7 premium mobile computing, Sony should have tested its VAIO Notebooks prior to  
8 selling them to consumers. Had Sony exercised reasonable care in testing its VAIO  
9 Notebooks, it would have discovered the Defect. Instead, Sony sold defective VAIO  
10 Notebooks to plaintiffs and to class members that were unfit for their intended use.  
11

12 26. Sony continues to manufacture, market and sell its defective VAIO  
13 Notebooks even after numerous consumer complaints about the Defect. And Sony  
14 continues to profit from the sale of defective VAIO Notebooks, while plaintiffs and  
15 class members incurred damages, including the price they paid to purchase the  
16 VAIO Notebooks and the costs to repair or replace them.  
17

18 27. Plaintiffs and class members each have spent thousands of dollars on  
19 VAIO Notebooks that no longer function.  
20

21 28. Notably, Sony’s VAIO Notebook warranty states consumers may take  
22 the VAIO to a Sony authorized service facility for warranty service and repair. As  
23 alleged herein, Best Buy is an authorized Sony service facility—and Best Buy has  
24 represented this fact to the consuming public and the class. Accordingly, plaintiffs  
25 are third party beneficiaries of the agreement between Sony and Best Buy.  
26

27 **Plaintiff Ronald Flynn’s Defective Sony VAIO Notebook and**  
28 **Repeated Attempts at Warranty Repair**

29. This is the *second* defective Sony VAIO Notebook Mr. Flynn

1 purchased from Best Buy. On or around October 2007, Mr. Flynn purchased his  
2 first Sony VAIO Notebook, which repeatedly “crashed” and ceased to operate. After  
3 two trips to Best Buy’s “Geek Squad,” *i.e.* Best Buy’s in-store repair personnel, Mr.  
4 Flynn returned his first Sony VAIO Notebook to Best Buy because he was within  
5 Best Buy’s 14-day return period for a refund. Best Buy, however, refused to refund  
6 an “optimization” charge Mr. Flynn paid.  
7

8         30. Mr. Flynn still needed a mobile computer for home and work. Best  
9 Buy’s Geek Squad technicians told Mr. Flynn, directly, the Sony VAIO line was Best  
10 Buy’s “top-of-the-line” portable computer. In addition, Best Buy’s technicians told  
11 Mr. Flynn his problems with the VAIO notebook were a “fluke” and he should give  
12 the Sony VAIO line another chance. Best Buy didn’t have a Sony VAIO in stock at  
13 this time.  
14

15         31. Mr. Flynn returned to Best Buy around two months later. During his  
16 visit, Best Buy employees told Mr. Flynn he should purchase his Sony VAIO  
17 Notebook from Best Buy and purchase Best Buy’s extended warranty. Best Buy’s  
18 sales representatives told Mr. Flynn, directly, the Best Buy extended warranty was  
19 superior to the Sony warranty due to the loss and damage coverage. Mr. Flynn also  
20 was told, in the event of any repairs, his Sony VAIO Notebook would be sent to Best  
21 Buy’s “Sony authorized repair center.” Hence Best Buy’s employees told Mr. Flynn  
22 Best Buy’s repair center was a Sony authorized warranty repair facility. On  
23 information and belief, plaintiffs allege Best Buy is a Sony authorized warranty  
24 repair center.  
25  
26

27         32. Mr. Flynn purchased his second Sony VAIO VGN-SZ650N VAIO  
28

1 Notebook from Best Buy on December 5, 2007. In addition, Mr. Flynn purchased  
 2 Best Buy's full three-year warranty and purchased their "computer optimization."  
 3 Thus at the express recommendation of Best Buy employees, as well as Sony's own  
 4 advertisements concerning its VAIO line, Mr. Flynn paid \$2,518.76 for his Sony  
 5 VAIO Notebook and the extended Best Buy warranty:  
 6

7 *Ronald Flynn Sony VAIO purchase*

8  
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11  
12  
13  
14  
15  
16  
17  
18  
19

WELCOME TO BEST BUY #562  
SARASOTA, FL 34231  
(941) 923-3955

Keep your receipt!

Val #: 1604-5586-4181-3222

0562 053 4323 12/05/07 13:05 0624384

**Duplicate Receipt**  
\*\*\*\*\*

8450259 VGNSZ650/C 1,830.55  
VGN-SZ650N/C/CORE217100/2048/  
REG 1,849.99 WITH 19.44 RZ CERT  
8123176 GEEK SQUAD 0.00  
WINDOWS VISTA PERSONALIZATION  
8147686 COM 3YR \$18 376.00  
COM 3YR \$1800-\$1999.99 NOTEBO  
REG 379.99 WITH 3.99 RZ CERT  
PSP # 2935449116  
SKU # 8450259  
EXP DATE 12/05/2010  
5426639 RZ CARD 0.00  
REWARD ZONE CARD  
SERIAL # 0408127972

SUBTOTAL 2,353.98  
SALES TAX 7.00 % 164.78  
TOTAL 2,518.76

XXXXXXXXXXXX9544 VISA 2,518.76  
RONALD FLYNN  
APPROVAL 051154

20 33. In addition to the three-year Best Buy warranty, Mr. Flynn's Sony  
 21 VAIO Notebook is covered by Sony's one-year limited warranty.

22 34. Mr. Flynn purchased his Sony VAIO Notebook, believing it to be  
 23 reasonably fit to use for its intended purpose, *i.e.*, mobile computing, as well as for  
 24 business.

25 35. But just weeks after purchasing his second Sony VAIO Notebook, Mr.  
 26 Flynn began experiencing frustrating technical problems, including mouse and  
 27 cursor errors and total machine "lockup."  
 28



1           36. It soon became apparent Mr. Flynn's Sony VAIO Notebook had a  
2 defective trackpad, which caused erratic and random cursor movement,  
3 unintentional opening of programs—and eventual lockup of the entire computer.  
4

5           37. This problem persisted despite repeated attempts to cure the defect  
6 within both Sony's one-year warranty and Best Buy's three-year warranty. Because  
7 the defect manifested within mere weeks of purchase, the defect manifested itself  
8 during all applicable warranty periods, including, without limitation, Sony's one-  
9 year warranty period.  
10

11           38. Just weeks after purchase—and well within Sony's one-year  
12 warranty—Mr. Flynn returned to Best Buy to have it repaired, just as Best Buy had  
13 told Mr. Flynn to do, because Best Buy was authorized by Sony to undertake  
14 warranty repairs.  
15

16           39. The attempt to repair the Sony VAIO Notebook while under warranty  
17 occurred in late December 2007 or early January 2008. While Mr. Flynn waited,  
18 Best Buy's "Geek Squad" technicians examined his Sony VAIO Notebook. Among  
19 other things, Best Buy reinstalled the software on his Sony VAIO Notebook,  
20 including reinstalling the Vista operating software. Best Buy's Geek Squad  
21 technicians also restored Mr. Flynn's Sony VAIO Notebook to its original factory  
22 settings.  
23

24           40. This first attempt at repair was unsuccessful. Mr. Flynn returned to  
25 Best Buy again, in January 2008. Best Buy again reinstalled software on Mr.  
26 Flynn's Sony VAIO Notebook and restored the computer to its factory settings.  
27 These visits would take an extended period of time, during which Mr. Flynn lost  
28



1 valuable time at work.

2           41. But even after these repair attempts, the Sony VAIO Notebook  
3 continued to experience repeated problems and failures, rendering the computer  
4 unusable. Mr. Flynn again returned to Best Buy, at which time Best Buy's "Geek  
5 Squad" examined the computer, restored software, and reset factory settings.  
6

7           42. None of these efforts repaired the Sony VAIO Notebook. Frustrated  
8 with the extended repair times at Best Buy, Mr. Flynn would periodically reset his  
9 Sony VAIO Notebook when the trackpad malfunctioned. Mr. Flynn had to  
10 continually undergo the "factory reset" and system restore process when his  
11 machine locked up. These periodic resets and restores took many hours, including  
12 backing up important files. The entire process was extremely frustrating to Mr.  
13 Flynn.  
14

15           43. In April 2009, Mr. Flynn returned *again* to Best Buy to have the VAIO  
16 trackpad repaired. Once again, Best Buy technicians experienced the defects  
17 firsthand. Mr. Flynn understands Best Buy must try several in-store warranty  
18 repair attempts before it will ship out a defective product for remote service center  
19 warranty repairs.  
20

21           44. Having now made multiple attempts to fix the computer, this time  
22 Best Buy shipped Mr. Flynn's defective Sony VAIO Notebook to its warranty repair  
23 center in Georgia. Best Buy claims to have replaced the Sony VAIO Notebook's  
24 touchpad board and, according to Best Buy's service order, they performed a  
25 "thermal overhaul" on Mr. Flynn's Sony VAIO Notebook:  
26  
27  
28



Service Order: 00562-948746377 4/24/2009

**Customer Information:**

ronald flynn  
1273 tree bay ln  
sarasota, FL 34242  
Primary Phone: (941) 350-2317  
Alternate Phone:

Service Location  
ATLANTA - SVC  
2780 HORIZON RIDGE CT  
SUWANEE, GA 30024  
(770) 614-6668

**Product Information:**

**Product Type:** VGNSZ650N/C/CORE2T710 **Brand:** Sony Computer  
**Model:** VGNSZ650N/C **Serial #:** 282056333018234  
**SKU:** 8450259 **Date Of Purchase:** 12/5/2007  
**BTP Expiration Date:** 12/6/2010 **Labor/Parts** BTP BTP  
**BTP Number:** 2935449116 **Labor/Parts End** 12/4/2008 12/4/2008  
**Est. Approval:** \$0.00 ☐ **Deposit Expected:** \$0.00  
**Estimated Completion Date:** 5/11/2009

**Accessories:**

Battery

**Condition:** Other(Specify)

rt side by dvd and keyboard area appears to be warped

**Symptoms:**

Notebook keeps locking up, touchpad and buttons become erratic. Customer has restored the system to factory setting several times and performance and issue continues to get worse. av

**Repair Comments:**

Replaced defective touch pad board and performed a thermal overhaul. Unit passed all post hardware tests.//Agent Avila

**Parts Replaced:**

Qty	Part Number	Description	Price Each	Total
1		LABOR	\$0.00	\$0.00
1	A-1516-170-ASYC	COMPLETE PWB	\$0.00	\$0.00

45. Following this repair effort, the Sony VAIO Notebook operated normally for a few months. But it soon returned to its defective state, with multiple trackpad problems and issues, freezing, and lockup.

46. Mr. Flynn returned to Best Buy *again* in September 2009 to, at long last, get his Sony VAIO Notebook repaired.

47. Best Buy technicians once again experienced the notebook's defects firsthand. Best Buy specifically noted: "Notebook keeps locking up, touchpad and buttons become unresponsive and pointer moves all around the screen. Performance and issue continues to get worse":



Service Order: 00562-950968107 09/10/2009

**Customer Information:****Service Location**

ATLANTA - SVC  
2780 HORIZON RIDGE CT  
SUWANEE, GA 30024  
(770) 614-6668

ronald flynn

1273 TREE BAY LN  
SARASOTA, FL 34242  
Primary Phone: (941) 350-2317  
Alternate Phone:

**Product Information:****Product Type:** VGNSZ650N/C/CORE2T**Model:** VGNSZ650N/C**SKU:** 8450259**BTP Expiration Date:** 12/06/2010**BTP Number:** 2935449116**Est. Approval:** \$0.00 ☐**Accessories:**

Battery

**Condition:** Other(Specify)

Looks ok

**Brand:** Sony Computer**Serial #:** 282056333018234**Date Of Purchase:** 12/05/2007**Labor/Parts:** Store Warranty Store Warranty**Labor/Parts End:** 12/04/2008 12/04/2008**Deposit Expected:** \$0.00**Estimated Completion Date:** 09/27/2009**Symptoms:**

2nd time in for the same issue, 00562-948746377. Notebook keeps locking up, touchpad and buttons become unresponsive and pointer moves all around the screen. Performance and issue continues to get worse. see log for additional information. (gr)

**Repair Comments:**

corrupted OS is causing the unit to lock up, touchpad and buttons become unresponsive and pointer moves, unit works properly outside of windows, all HW passed tests, unit passed touchpad test, stress test, passed FACE 1320-TEAM 29 agent 032611 BATTERY

**Parts Replaced:**

Qty	Part Number	Description	Price Each	Total
-----	-------------	-------------	------------	-------

48. Despite this second attempt to fix the computer at Best Buy's service facility in Georgia, Mr. Flynn's Sony VAIO Notebook experiences the same trackpad defects.

49. Myriad attempts were made to fix and repair Mr. Flynn's Sony VAIO Notebook, both during Sony's one-year warranty and during Best Buy's extended warranty. This included frustrating repeat trips to Best Buy starting in December 2007 and beyond. And each time, including when Mr. Flynn's defective Sony VAIO Notebook was shipped to Georgia for repair, Mr. Flynn was without his VAIO Notebook for weeks while the repairs were performed.

50. Mr. Flynn's Sony VAIO Notebook still is defective, and cannot be used for its intended computing purposes or for Mr. Flynn's business needs.

**Plaintiff Christina Egner's Defective Sony VAIO Notebook and Repeated Attempts to Fix the Defective Sony Notebook Computer**

51. Plaintiff Christina Egner's experiences confirm the problem with Sony VAIO Notebooks is current and ongoing. Her experience further highlights the extreme frustration consumers experience when seeking warranty repair and returns from Sony and Best Buy.

52. Ms. Egner purchased a defective SONY VAIO VGN-NW240 F/P 15.5 inch Notebook from Best Buy on December 11, 2009 for mobile computing purposes. She also purchased a Best Buy extended warranty. Ms. Egner paid \$995.96 for her Sony VAIO Notebook:



53. Approximately one week after purchase, Ms. Egner's Sony VAIO

1 Notebook trackpad started functioning erratically. Ms. Egner contacted Sony,  
2 directly, to report the problem.

3         54. For example, on December 20, 2009 Ms. Egner called Sony, directly, to  
4 report trackpad problems with her Sony VAIO Notebook. Sony technicians directed  
5 Ms. Egner to uninstall, and then reinstall, the “Alps Pointer Device Driver” on her  
6 Sony VAIO Notebook.

7  
8         55. But this did not cure the defect. Ms. Egner telephoned Sony three more  
9 times in December 2009. Sony directed Ms. Egner to remove and reinstall the Sony  
10 VAIO Notebook battery, and click into “F10 mode.” During this time, Sony insisted  
11 nothing was wrong with Ms. Egner’s Sony VAIO Notebook—despite the fact Ms.  
12 Egner had the Sony VAIO Notebook before her and could readily observe the  
13 trackpad defect.

14  
15         56. After her call with Sony, Ms. Egner’s VAIO Notebook continued to  
16 experience problems. On January 4, 2010 Ms. Egner visited a “Sony Style” store in  
17 Pennsylvania. A Sony technician examined Ms. Egner’s computer for several  
18 minutes, declared he didn’t see an issue, and refused to ship the VAIO for repairs.

19  
20         57. Ms. Egner *again* called Sony to report frustrating trackpad problems  
21 on January 14, 2010. This time Sony issued a work order, Reference No.  
22 E44125476, to have an on-site technician visit with Ms. Egner and replace the  
23 trackpad on her VAIO notebook.

24  
25         58. On January 29, 2010, the Sony on-site technician replaced the Sony  
26 VAIO Notebook trackpad. But within 15 minutes of replacing the trackpad, the  
27 Sony expert technician *himself* could plainly see the VAIO trackpad was  
28

malfunctioning, with incorrect inputs and cursor behavior.

59. The Sony onsite technician called a Sony “customer service agent,” who directed Ms. Egner to restore her Sony VAIO Notebook to factory settings, purportedly because Best Buy may have installed something on the computer, causing a conflict.

60. The Sony onsite technician left. Ms. Egner performed a full restore and factory reset, as Sony instructed her to do. The restore and reset failed to correct the problem. The VAIO trackpad malfunctioned.

61. Angry and frustrated, Ms. Egner called Best Buy to return the Sony VAIO Notebook. Best Buy told Ms. Egner she could not return the defective Sony VAIO because she was now “over” Best Buy’s 30-day return policy.

62. This same day, Ms. Egner telephoned Sony *again*, at which time Sony told Ms. Egner to ship the defective computer to the Sony San Diego repair center, Event ID E44154223. Once again Sony replaced a trackpad “cable.”

**SONY**

**STATEMENT OF WORK**  
This is not an Invoice

SONY SERVICE CENTER  
16550 VIA ESPRILLO  
SAN DIEGO CA 92127

SERVICE (866) 942-9667  
FAX (858) 487-8637

Sony Electronics Inc.

Notification No.	Order Date		Invoice No	Invoice Date	Type	Net Due Date	Page
300033588	01/29/2010					Z005	1 OF 1
Event ID	Shipped	Shipped From	Shipped Via		Reason Code		F/P Approval
E44154223	01/29/2010	SAN DIEGO					
Order/Invoice Comments				Customer Purchase Order Number/Reference			
				/			

BILL TO:  
Egner, Christina,

SHIP TO:  
Egner, Christina,



## CORRECTIVE REPAIR ACTION AND PARTS REPLACED

## No Power – No Lights

- ☐ No Problem Found  
☐ AC Adaptor  
☐ Motherboard  
☐ Powerboard  
☐ Other \_\_\_\_\_

## Dim / Distorted / No Display

- ☐ No Problem Found  
☐ LCD-Display  
☐ Inverter  
☐ Harness  
☐ Motherboard  
☐ Other \_\_\_\_\_

NETWORKING/  
WLAN / WWAN/ BTOOTH

- ☐ No Problem Found  
☐ Wireless card  
☐ WWAN Module  
☐ SIM card  
☐ Software/Driver  
☐ Other \_\_\_\_\_

## No Post - Blank Screen

- ☐ No Problem Found  
☐ CPU  
☐ Memory  
☐ Motherboard  
☐ Other \_\_\_\_\_

## Not Booting up to Windows

- ☐ No Problem Found  
☐ CPU  
☐ Memory  
☐ HDD - Hard Drive  
☐ Motherboard  
☐ Software  
☐ Other \_\_\_\_\_

## Freezing / Locking up

- ☐ No Problem Found  
☐ CPU  
☐ Memory  
☐ HDD - Hard Drive  
☐ Motherboard  
☐ Software/Driver  
☐ Other \_\_\_\_\_

Cannot Burn/Detect/Read  
CD/DVD

- ☐ No Problem Found  
☐ ODD - Optical Drive  
☐ Software/Driver  
☐ Other \_\_\_\_\_

## Shutdown / Restart

- ☐ No Problem Found  
☐ Motherboard  
☐ Memory  
☐ CPU  
☐ AC Adaptor  
☐ Software/Driver  
☐ Other \_\_\_\_\_

- ☐ Cosmetics  
☐ Keyboard  
☐ Firmware Upgrade  
☐ BIOS Upgrade  
☐ Battery Pack  
☐ Video Card  
☐ Cooling Fan  
☒ Touchpad

Re-Image Hard Drive: \_\_\_\_\_ Other: cable

63. Ms. Egner received the Sony VAIO Notebook on February 19, 2010. Within 15 minutes of turning on her Sony VAIO Notebook, the trackpad malfunctioned.

64. Ms. Egner telephoned Best Buy, asking if she could at least get a replacement. Best Buy told Ms. Egner that because she had purchased an extended warranty, to get a replacement Sony VAIO, Ms. Egner's Sony VAIO Notebook would need to be sent out for repair three times "from Best Buy." Ms. Egner told Best Buy of her repeated efforts to repair the computer via Sony. Best Buy told Ms. Egner that Sony's attempts to repair the computer didn't count against Best Buy's "three attempts" replacement policy.

65. This same day, February 19, 2010, yet *another* work order was entered

1 to have Ms. Egner's Sony VAIO Notebook repaired in San Diego. This time Ms.  
 2 Egner spoke with a Sony "supervisor" who said her computer would be "flagged" for  
 3 replacement since it had numerous repair attempts, yet the Sony VAIO Notebook  
 4 still was defective:  
 5

6 **SONY** **STATEMENT OF WORK** **SONY SERVICE CENTER**  
 7 **SONY** This is not an Invoice 16550 VIA ESPRILLO  
 8 SAN DIEGO CA 92127  
 9 Sony Electronics Inc. SERVICE (866) 942-9667  
 10 FAX (858) 487-8637

Notification No.	Order Date		Invoice No	Invoice Date	Type	Net Due Date	Page
300038546	02/19/2010					Z005	1 OF 1
Event ID	Shipped	Shipped From	Shipped Via		Reason Code	F/P Approval	
E44486388	02/19/2010	SAN DIEGO					
Order/Invoice Comments				Customer Purchase Order Number/Reference			
				/			

13 **BILL TO:** **SHIP TO:**  
 14 Egner, Christina, Egner, Christina,

15 66. After shipping her Sony VAIO Notebook to Sony's repair center in San  
 16 Diego, Ms. Egner received a call from a Sony technician. The Sony technician told  
 17 Ms. Egner he saw no problems with the computer.  
 18

19 67. Ms. Egner explained she—and every member of her family who used  
 20 the computer—had constant trackpad problems and defects. Ms. Egner explained to  
 21 Sony, directly, the cursor would move on its own. Or the cursor wouldn't move at  
 22 all, even though users were directing the cursor to move via the trackpad.  
 23

24 68. Ms. Egner told the Sony technician her computer had been flagged for  
 25 replacement. The Sony technician told Ms. Egner he would talk to his supervisor  
 26 and call Ms. Egner back. The Sony technician never returned Ms. Egner's call.  
 27

28 69. The Sony VAIO Notebook was returned to Ms. Egner, stating the Sony



1 VAIO Notebook was tested and found to be operating to factory specifications.

2 70. When Ms. Egner received the computer, it immediately exhibited the  
3 same defect.

4 71. To date, the Sony VAIO Notebook trackpad is defective. It does not  
5 work as intended, since the cursor either fails to move, moves on its own, or  
6 otherwise fails to appropriately respond to input.

7 72. Ms. Egner cannot return the Sony VAIO Notebook because Best Buy  
8 claims it is outside the 30-day return window. Sony cannot fix the VAIO Notebook.  
9 And Best Buy refuses to replace Ms. Egner's VAIO Notebook, claiming all of her  
10 Sony repair attempts simply do not count as "Best Buy repair" attempts.

11 **Sony Fails to Recall the VAIO Notebooks or Disclose the Defect**

12 73. These representatives' experiences mirror the classwide manifestation  
13 of the Defect. Sony has never informed purchasers about the Defect's existence.  
14 Defendant never revealed the existence of the Defect in its marketing materials, or  
15 on its website, where Sony and Best Buy extol the virtues and characteristics of the  
16 VAIO Notebooks to generate sales.

17 74. Sony has never issued a recall of the VAIO Notebooks, nor has Sony  
18 offered to replace or repair the defective VAIO Notebooks with working component  
19 parts. Sony has wrongfully passed the burden and expense in repairing or replacing  
20 the VAIO Notebooks to plaintiffs and to class members.

21 75. Despite Sony's awareness of the Defect, Sony has refused to take  
22 action to protect class members from the Defect. The Defect was a material fact  
23 concerning the reliability and normal operation of the VAIO Notebooks, known only  
24

1 to defendants. Had plaintiffs and class members known about the Defect, they  
2 would not have purchased their Sony VAIO Notebooks.

3 76. Plaintiffs and class members could not have reasonably discovered the  
4 Defect inherent in the Sony VAIO Notebooks prior to purchasing their defective  
5 computers.  
6

7 77. Sony warrants VAIO Notebooks against defect in material or  
8 workmanship for one year from the date of purchase. In the numerous cases where  
9 the VAIO Notebooks fail after the first year of purchase, Sony has imposed and  
10 continues to burden consumers with hundreds of dollars in service fees and labor  
11 costs.  
12

13 78. Sony's wrongful acts caused plaintiffs and class members to purchase  
14 computers they otherwise would not have purchased, paid more for those computers  
15 than they would have paid and unnecessarily paid, and will continue to pay repair  
16 costs as a result of the Defect.  
17

### 18 **CLASS ACTION ALLEGATIONS**

19 79. Plaintiffs assert this action individually and as a class action under  
20 Federal Rule of Civil Procedure 23 on behalf of a class of persons initially defined as  
21 follows:  
22

23 All persons in the United States, or such states as the Court may  
24 determine is appropriate, who purchased a Sony VAIO notebook  
containing a defective touchpad since January 1, 2007.

25 80. Excluded from the class are the Court and defendants, their officers  
26 and directors, families and legal representatives, heirs, successors, or assigns and  
27 any entity in which defendants have or had a controlling interest.  
28

1           81. Plaintiffs reserve the right to amend or modify the class definition in  
2 connection with their motion for class certification or the result of discovery.

3           82. This class action is properly brought as a class action for the following  
4 reasons. The class is so numerous that joinder of the individual members of the  
5 proposed class is impracticable. The class includes thousands of persons  
6 geographically dispersed throughout the United States. The precise number and  
7 identities of class members are unknown to plaintiffs, but can be ascertained  
8 through discovery, namely using Sony's sales and registration records and other  
9 information kept by Sony, as well as the complaints Sony received.  
10

11           83. Plaintiffs do not anticipate any insurmountable difficulties in the  
12 management of this action as a class action. The class is ascertainable and there is  
13 a well-defined community of interest in the questions of law and fact alleged since  
14 the rights of each class member were violated in similar fashion based upon  
15 defendants' misconduct.  
16

17           84. Questions of law or fact common to the class exist as to plaintiffs and  
18 all class members, and these common questions predominate over any questions  
19 affecting only individual class members. Among the common questions of law and  
20 fact are the following:  
21

22           (a) whether Sony and Best Buy provided plaintiffs and class  
23 members with VAIO Notebooks containing the Defect;  
24

25           (b) whether the Defect would be considered material by a  
26 reasonable consumer;  
27

28           (c) whether defendants had a duty to disclose the Defect;

1 (d) whether defendants violated the Consumers Legal Remedies  
2 Act, Cal. Civ. Code §§ 1750 *et seq.*;

3 (e) whether defendants engaged in unlawful or unfair business  
4 practices in violation of California Bus. & Prof. Code §§ 17200 *et seq.*;

5 (f) whether defendants breached any implied warranties;

6 (g) whether defendants were unjustly enriched through their  
7 wrongful acts;

8 (h) whether plaintiffs and the class are entitled to equitable relief  
9 and the scope and nature of such relief; and

10 (i) the appropriate measure of restitution or damages.

11  
12 85. Sony and Best Buy engaged in a common course of conduct giving rise  
13 to the legal rights sought to be enforced by plaintiffs and the class. The injuries  
14 sustained by plaintiffs and the class flow, in each instance, from a common nucleus  
15 of operative facts.

16  
17 86. Plaintiffs' claims are typical of class members' claims. The defenses  
18 defendants may assert against plaintiffs' claims are likely to be typical of the  
19 defenses defendants may assert against the class members' claims.

20  
21 87. Plaintiffs will fairly and adequately protect the class' interests.  
22 Plaintiffs have no interests adverse to the class' interests and have retained counsel  
23 with significant experience in the prosecution of class actions and complex  
24 consumer litigation, and who will vigorously prosecute this action.

25  
26 88. A class action is superior to other available methods for the fair and  
27 efficient adjudication of this controversy and the individual joinder of all class  
28

1 members is impracticable, if not impossible because a large number of class  
2 members are located throughout the United States and have no particularized need  
3 to individually prosecute such claims. Individualized litigation would likewise  
4 present the potential for inconsistent judgments and would result in significant  
5 delay and expense to all parties and multiple courts hearing virtually identical  
6 lawsuits. By contrast, the conduct of this action as a class action presents fewer  
7 management difficulties, conserves the resources of the parties and the Court, and  
8 protects the rights of each class member.  
9

10  
11 89. Sony and Best Buy have acted on grounds generally applicable to the  
12 entire class, thereby making declaratory or final injunctive relief appropriate with  
13 respect to the class as a whole.

14 90. Notice of the pendency or resolution of this action can be provided to  
15 the class by mailed notice or the best notice practicable under the circumstances.  
16

### 17 **COUNT ONE**

#### 18 **Consumers Legal Remedies Act, California Civil Code §§ 1750 *et seq.***

#### 19 **(against defendant Sony)**

20 91. Plaintiffs incorporate by reference ¶¶ 1-90 as though fully set forth and  
21 alleged herein.

22 92. Plaintiffs assert this count individually and on behalf of the proposed  
23 class under Civil Code § 1781.

24 93. The Consumers Legal Remedies Act (“CLRA”) was enacted to protect  
25 consumers against unfair and deceptive business practices. The CLRA applies to  
26 defendant’s acts and practices because it covers transactions involving the sale or  
27 lease of goods to consumers.  
28

94. The VAIO Notebooks are “goods” under Civil Code § 1761(a).

95. Sony is a “person” under Civil Code § 1761(c).

96. Plaintiffs and class members are “consumers” under Civil Code § 1761(d).

97. Plaintiffs and class members engaged in “transactions” under Civil Code § 1761(e), including the purchase or lease of VAIO Notebooks and the presentation of VAIO Notebooks for repair or replacement of the Defect.

98. Sony’s unfair and deceptive business practices were intended and did result in the sale or lease of the VAIO Notebooks, a defective consumer product.

99. Sony violated the CLRA by engaging in the following unfair and deceptive practices:

(a) in violation of § 1770(a)(5), Sony represented the VAIO Notebooks have characteristics, uses and benefits that they do not have; and

(b) In violation of § 1770(a)(7), Sony represented the VAIO Notebooks are of a particular standard, quality or grade when they are not.

100. Sony’s VAIO Notebooks failed to perform in accordance with their expected characteristics, uses, and benefits.

101. Sony had exclusive knowledge of material facts, *i.e.* that the VAIO Notebooks were defective, unknown to plaintiffs and the class. Had plaintiffs and class members known of the Defect in the VAIO Notebooks, they would not have purchased the computers, at the prices they did.

102. Sony had a duty to disclose the Defect in the VAIO Notebooks for various reasons, including:

1 (a) Sony had exclusive knowledge of material facts not known to  
2 plaintiffs; and

3 (b) Sony actively concealed a material fact from plaintiffs.  
4

5 103. Sony engaged in unfair and deceptive practices by withholding the  
6 above material facts from plaintiffs and the class.

7 104. As a direct and proximate result of defendant's conduct, plaintiffs and  
8 the class suffered injury and damage in an amount to be determined at trial.  
9 Plaintiffs and the class are entitled to injunctive relief, restitution, court costs and  
10 attorney fees, and other relief the Court deems proper.  
11

12 105. Pursuant to California Civil Code § 1782, plaintiffs' counsel sent  
13 defendants a CLRA demand letter via certified mail. Sony failed to provide the  
14 relief demanded, and therefore plaintiffs seek actual and punitive damages for  
15 violation of the CLRA.  
16

## 17 **COUNT TWO**

### 18 **Unlawful And Unfair Business Practices**

#### 19 **California Business & Professions Code §§ 17200 *et seq.***

#### 20 **(against defendant Sony)**

21 106. Plaintiffs incorporate by reference ¶¶ 1-105 as though fully set forth  
22 and alleged herein.

23 107. Sony's acts and practices constitute unlawful and unfair business  
24 practices under California's Unfair Competition Law ("UCL"), Business &  
25 Professions Code §§ 17200 *et seq.*

26 108. Sony's business practices that violate the UCL include failing to  
27 disclose prior to or at the point of sale, the point of repair, or otherwise, the VAIO  
28

1 Notebooks were defective.

2 109. Sony engaged in “unlawful” business acts and practices by:

3 (a) violating California’s Consumers Legal Remedies Act, Civil Code  
4 §§ 1770 (a)(5) and (a)(7);  
5

6 (b) violating the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301  
7 *et seq.*;

8 (c) breaching express and implied warranties; and

9 (d) engaging in negligent conduct.  
10

11 110. Sony engaged in “unfair” business acts and practices by, among other  
12 things:

13 (a) engaging in conduct where the utility of such conduct, if any, is  
14 outweighed by the gravity of the consequences to plaintiffs and the class; and

15 (b) engaging in conduct that is immoral, unethical, oppressive,  
16 unscrupulous, or substantially injurious to plaintiffs and the class.  
17

18 111. Specifically, Sony engaged in “unfair” business acts and practices by  
19 selling VAIO Notebooks with defective trackpads that can cause the onscreen cursor  
20 to: (a) track in reverse, or the cursor moves in a direction opposite to the user’s  
21 input; (b) freezes or fails to properly register user’s input, or (c) engages in erratic  
22 behavior, including randomly opening and closing windows and programs under  
23 normal use. Users also report system lockups.  
24

25 112. Sony’s conduct is ongoing and continues to this date.

26 113. Sony is strictly liable for engaging in unfair business acts and  
27 practices.  
28





1 and alleged herein.

2 118. Plaintiffs assert this count individually and on behalf of the proposed  
3 class.

4 119. The VAIO Notebooks are “consumer products” within the meaning of  
5 the Magnuson-Moss Act, 15 U.S.C. § 2301(1).

6 120. Plaintiffs and class members are “consumers” within the meaning of  
7 the Magnuson-Moss Act, 15 U.S.C. § 2301(3).

8 121. Sony is a “supplier” and “warrantor” within the meaning of the  
9 Magnuson-Moss Act, 15 U.S.C. §§ 2301(4)-(5).

10 122. Best Buy is a “warrantor” and “retailer” within the meaning of the  
11 Magnuson-Moss Act, 15. U.S.C. §§ 2301(4)-(5).

12 123. Sony and Best Buy warranted to plaintiffs and to class members the  
13 VAIO Notebooks were of merchantable quality and fit for the ordinary purposes for  
14 which the computers are used.

15 124. Sony and Best Buy have breached and refused to honor their implied  
16 warranty. Defendants breached their implied warranties as the VAIO Notebooks  
17 were not of merchantable quality and failed to perform as reasonably expected.

18 125. The amount in controversy of plaintiffs’ and class member’s individual  
19 claims meets or exceeds the sum or value of \$25. In addition, the amount in  
20 controversy meets or exceeds the sum or value of \$50,000 (exclusive of interest and  
21 costs) computed on the basis of all claims to be determined in this suit.

22 126. Sony and Best Buy have been afforded a reasonable opportunity to  
23 cure its breach of warranty. As alleged, defendant had ample notice of the Defect,  
24  
25  
26  
27  
28

1 but failed to remedy the situation.

2 127. As a direct and proximate result of defendant's conduct, plaintiffs and  
3 the class have suffered injury and damages in an amount to be determined at trial.  
4 Plaintiffs and the class are entitled to recover damages, consequential damages,  
5 specific performance, diminution in value, rescission, and other relief as authorized  
6 by law.  
7

8 **COUNT FOUR**  
9 **Breach of Express Warranty**  
10 **(against defendants Sony and Best Buy)**  
11

12 128. Plaintiffs incorporate by reference ¶¶ 1-127 as though fully set forth  
13 and alleged herein.

14 129. Plaintiffs assert this Count individually and on behalf of the proposed  
15 Class.

16 130. Plaintiffs purchased their Sony VAIO Notebooks from an authorized  
17 Sony retailer, Best Buy, and used the notebook computers for their ordinary and  
18 intended purpose.  
19

20 131. Pursuant to an agreement between Best Buy and Sony, Best Buy is  
21 Sony's authorized retailer and authorized service facility, and plaintiffs and the  
22 class are third-party beneficiaries of such contract.  
23

24 132. Plaintiffs and the class purchased their VAIO Notebooks with the  
25 reasonable expectation that the computers' input devices, such as the touchpad,  
26 would function properly throughout the usable life of the product.

27 133. Defendants made statements of fact and promises to plaintiffs and the  
28

1 class that the VAIO Notebooks were of merchantable quality and fit for their  
2 ordinary use.

3 134. Defendant Sony also made a statement of fact and promise warranting  
4 its VAIO Notebooks would be free “against defects in material or workmanship” for  
5 one year from the original date of purchase. Sony made a statement of fact and  
6 promise warranting it would “repair or replace with new or refurbished product or  
7 parts, any product or parts determined to be defective.” Similarly, Best Buy, made a  
8 statement of fact and promise warranting the Sony VAIO Notebooks would be free  
9 against defects for three years from the original date of purchase warranting it  
10 would repair or replace the VAIO Notebook if it was found to be defective.  
11

12 135. The VAIO Notebooks failed to perform as defendants’ promised. The  
13 VAIO Notebooks were not of the same quality as those generally acceptable in the  
14 trade, nor were they fit for the ordinary purposes for which such goods are used. In  
15 breach of express warranty, the cursor on Sony’s VAIO Notebook tracks in reverse,  
16 freezes, and engages in erratic behavior when the consumer uses the notebook,  
17 rendering the Sony VAIO Notebooks inoperable.  
18

19 136. Plaintiffs took reasonable steps to notify defendants within a  
20 reasonable time—and within Sony’s one-year warranty and Best Buy’s three-year  
21 extended warranty—the Sony VAIO Notebooks were not as represented, were not of  
22 merchantable quality, nor fit for their particular purpose.  
23

24 137. Defendants were further put on notice of the Defect by the numerous  
25 complaints concerning the Defect and by the filing of this lawsuit. When defendants  
26 placed the VAIO Notebooks into the stream of commerce, it reasonably should have  
27  
28

1 known of the Defect.

2 138. The defects in the VAIO Notebooks were not open or obvious to  
3 consumers prior to purchase.

4 139. Any purported limitation of the duration and scope of the express  
5 warranty given by defendants is unreasonable, unconscionable and void, because  
6 Sony and Best Buy knew or recklessly disregarded the Defect in the VAIO  
7 Notebooks existed and might not be discovered, if at all, until the defective VAIO  
8 Notebooks had been used for a period of time longer than the period of any written  
9 warranty, and Sony and Best Buy willfully withheld information about the defect  
10 from purchasers of Sony's VAIO Notebooks.

11 140. As a direct and proximate result of defendants' representations and  
12 conduct, plaintiffs and the class have suffered injury and damages in an amount to  
13 be determined at trial. The failure of the VAIO Notebooks to be as represented, to  
14 have the expected quality and to be suitable were substantial factors in causing  
15 harm to plaintiffs and the class. Plaintiffs and the class are entitled to recover  
16 actual and incidental damages, including diminution in value, costs, attorney fees,  
17 and other relief as authorized by law.

## 21 **COUNT FIVE**

### 22 **Breach of Implied Warranty of Fitness For A Particular Purpose** 23 **(against defendants Sony and Best Buy)**

24 141. Plaintiffs incorporate by reference ¶¶ 1-140 as though fully set forth  
25 and alleged herein.

26 142. Plaintiffs purchased the Sony VAIO Notebooks from Sony's authorized  
27 retailer, Best Buy.  
28

1           143. Pursuant to an agreement between Best Buy and Sony, Best Buy is  
2 Sony's authorized retailer and authorized service facility, and plaintiffs and the  
3 class are third-party beneficiaries of such contract.  
4

5           144. At the time of purchase, defendants knew or had reason to know  
6 plaintiffs intended to use the product for a particular purpose, mobile computing.

7           145. At the time of purchase, defendants knew or had reason to know  
8 plaintiffs were relying on their skill and judgment to furnish a product that was  
9 suitable for the particular purpose.  
10

11           146. Plaintiffs justifiably relied on defendants' skill and judgment.

12           147. By placing its VAIO Notebooks in the stream of commerce, defendants  
13 impliedly warranted the Sony VAIO Notebooks were reasonably fit for their  
14 particular purpose.  
15

16           148. Sony's VAIO Notebooks are not fit for their particular purpose. In  
17 breach of the implied warranty of fitness for a particular purpose, the cursor on  
18 Sony's touchpad notebook tracks in reverse, freezes, and engages in erratic behavior  
19 when the consumer uses the notebook, rendering the Sony VAIO Notebooks  
20 inoperable.  
21

22           149. Sony's VAIO Notebooks are not reasonably fit for their intended  
23 particular use when they left defendants' control and entered the market. The  
24 defects in the VAIO Notebooks were not open or obvious to consumers.

25           150. Any purported limitation of the duration and scope of the implied  
26 warranty of fitness for a particular purpose given by defendants is unreasonable,  
27 unconscionable and void, because defendants knew or recklessly disregarded the  
28

1 defects in VAIO Notebooks existed and might not be discovered, if at all, until the  
2 defective notebook computer had been used for a period of time longer than the  
3 period of any written warranty, and Sony willfully withheld information about the  
4 defect from purchasers of Sony computers.  
5

6 151. Due to the unequal bargaining power between the parties, plaintiffs  
7 and class members had no meaningful alternative to accepting defendants'  
8 attempted pro forma limitation of the duration of any warranties.  
9

10 152. Plaintiffs took reasonable steps to notify defendants within a  
11 reasonable time the VAIO Notebooks were unsuitable.

12 153. As a result, plaintiffs and the class have been damaged in, inter alia,  
13 the amount they paid to purchase Sony's un-merchantable defective VAIO  
14 Notebooks.  
15

## 16 **COUNT SIX**

### 17 **Breach of Implied Warranty of Merchantability** 18 **(against defendants Sony and Best Buy)**

19 154. Plaintiffs incorporate by reference ¶¶ 1-153 as though fully set forth  
20 and alleged herein.

21 155. Plaintiffs bought their Sony VAIO Notebooks from Sony's authorized  
22 retailer, Best Buy. At the time of purchase, defendants were in the business of  
23 selling these goods.

24 156. Pursuant to an agreement between Best Buy and Sony, Best Buy is  
25 Sony's authorized retailer and authorized service facility, and plaintiffs and the  
26 class are third-party beneficiaries of such contract.  
27

28 157. By placing its VAIO Notebooks in the stream of commerce,

1 defendants impliedly warranted its VAIO Notebooks were reasonably fit for their  
2 intended use.

3 158. Sony's VAIO Notebooks are not merchantable. The Sony VAIO  
4 Notebooks were and are unfit for the ordinary purposes for which such goods are  
5 used, and were not of the same quality of those generally acceptable in the trade. In  
6 breach of the implied warranty of merchantability, the cursor on Sony's VAIO  
7 Notebooks track in reverse, freeze and engage in erratic behavior when the  
8 consumers use the VAIO Notebooks, rendering the computers inoperable.  
9

10 159. Sony's VAIO Notebooks were not reasonably fit for its intended use  
11 when it left defendants' control and entered the market.  
12

13 160. The defects in the VAIO Notebooks were not open or obvious to  
14 consumers.  
15

16 161. Plaintiffs took reasonable steps to notify defendants within a  
17 reasonable time—and within Sony's one-year warranty and Best Buy's three-year  
18 extended warranty—the Sony VAIO Notebooks did not have the expected quality.

19 162. Any purported limitation of the duration and scope of the implied  
20 warranty of merchantability given by defendants is unreasonable, unconscionable  
21 and void, because defendants knew or recklessly disregarded the defects in the  
22 VAIO Notebooks existed and may not be discovered, if at all, until the touchpad  
23 VAIO Notebooks were used for a period of time longer than the period of any  
24 written warranty, and defendants willfully withheld information about the defects  
25 from purchasers of Sony VAIO Notebook computers.  
26

27 163. Moreover, due to the unequal bargaining power between the parties,  
28



1 plaintiffs and class members had no meaningful alternative to accepting  
2 defendants' attempted pro forma limitation of the duration of any warranties.

3 164. As a direct and proximate result, plaintiffs and proposed class  
4 members have been damaged in, inter alia, the amount they paid to purchase  
5 Sony's defective VAIO Notebooks.  
6

7 **COUNT SEVEN**

8 **Negligence and Strict Liability**

9 **(against defendant Sony)**

10 165. Plaintiffs incorporate by reference ¶¶ 1-164 as though fully set forth  
11 and alleged herein.

12 166. Plaintiffs assert this count individually and on behalf of the proposed  
13 class.  
14

15 167. Sony designed, manufactured, inspected, tested, labeled, packaged,  
16 distributed, marketed and sold the VAIO Notebooks and their defective component  
17 parts, which was intended by defendant to be used by plaintiffs and the class  
18 without inspection for defects.

19 168. Sony owed plaintiffs and the class a duty to properly design,  
20 manufacture, inspect, test, label, package and market the VAIO Notebooks to  
21 function in their ordinary capacities during their useful life.  
22

23 169. Sony breached its duty when it failed to properly design, manufacture,  
24 inspect, test, label, package and market its VAIO Notebooks before placing them  
25 into the stream of commerce.  
26

27 170. Sony reasonably should have known about the Defect before placing  
28 the VAIO Notebooks on the market. Had Sony properly designed, manufactured,

1 inspected, tested, labeled, packaged, distributed, marketed and sold the VAIO  
2 Notebooks and their defective component parts, it would have discovered the Defect.

3 171. Plaintiffs and class members used the VAIO Notebooks and their  
4 component parts without the ability to conduct an inspection for the Defect.  
5 Plaintiffs and class members were not aware of the Defect at any time before  
6 suffering injury caused by the Defect.  
7

8 172. As a direct and proximate result of Sony's negligence, plaintiffs and  
9 the class have suffered injury and damages in an amount to be determined at trial.  
10 Plaintiffs and the class are entitled to recover damages.  
11

## 12 **COUNT EIGHT**

### 13 **Common Counts, Assumpsit, and Declaratory Relief** 14 **(against defendant Sony)**

15 173. Plaintiffs incorporate by reference ¶¶ 1-172 as though fully set forth  
16 and alleged herein.  
17

18 174. Sony became indebted to plaintiffs and the class for money had and  
19 received by Sony and monies paid to Sony, by which Sony benefitted from its  
20 unlawful conduct in terms of receiving revenues and profits from plaintiffs and the  
21 class from Sony's sale of the defective VAIO Notebooks based on the  
22 misrepresentations and omissions detailed above. Sony received this excessive  
23 revenue either directly or indirectly from plaintiffs and class members.  
24

25 175. As a result of Sony's deceptive and misleading promotion, advertising,  
26 marketing, and sale of the defective notebook computers described above, Sony has  
27 been unjustly enriched at plaintiffs' and class members' expense. Under the  
28

1 circumstances, it would be against equity and good conscience to permit Sony to  
 2 retain the ill-gotten benefits it received from plaintiffs and other class members in  
 3 light of the material fact the VAIO Notebooks were not what Sony represented them  
 4 to be.  
 5

6 176. By virtue of equitable principles in quasi-contract and assumpsit,  
 7 plaintiffs and other class members are entitled to a return of such monies and the  
 8 establishment of a constructive trust consisting of the benefits conferred by Sony  
 9 customers in the form of the excessive revenues or profits derived from Sony's  
 10 wrongful sale of the vehicles at issue, and the return of any monies by which Sony  
 11 was unjustly enriched to plaintiffs and other class members. The Court should also  
 12 issue declaratory relief to declare the rights and responsibilities of the parties  
 13 pursuant to the provisions of California Code of Civil Procedure § 1060.  
 14

## 15 **COUNT NINE**

### 16 **Violations of The New Jersey Consumer Fraud Act**

#### 17 **New Jersey Statute §§ 56:8-1 *et seq.***

#### 18 **(against defendant Sony)**

19 177. Plaintiff Egner incorporates by reference ¶¶ 1-176 as though fully set  
 20 forth and alleged herein.  
 21

22 178. Plaintiff Egner asserts this count individually and on behalf of the  
 23 proposed class.

24 179. This count is brought against defendant Sony pursuant to the New  
 25 Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*

26 180. Plaintiff Egner is a resident of the State of New Jersey. Plaintiff Egner  
 27 purchased her defective Sony VAIO Notebook at a Best Buy in the State of New  
 28

1 Jersey. Plaintiff Egner sought repair and return at Best Buy in New Jersey.

2 181. The New Jersey Consumer Fraud Act prohibits any “[f]raud, etc., in  
3 connection with sale or advertisement of merchandise or real estate as unlawful  
4 practice.”  
5

6 182. Further, the Act prohibits any “knowing, concealment, suppression or  
7 omission of any material fact with the intent that others rely upon such  
8 concealment, suppression or omission in connection with the sale . . . of any  
9 merchandise . . .” New Jersey Statute § 56:8-2.  
10

11 183. Plaintiff Egner and class members reasonably expected their Sony  
12 VAIO Notebooks to last well beyond the one-year Sony warranty and to be fit for  
13 their intended purpose, *i.e.* mobile computing. Sony markets its VAIO notebook  
14 computers as a premium brand.  
15

16 184. The Sony VAIO Notebooks are defectively designed and manufactured  
17 because the trackpad component can cause the onscreen cursor to: (a) track in  
18 reverse, *e.g.* the cursor moves in a direction opposite to the user’s input; (b) freeze or  
19 fail to register user input; or (c) engage in erratic behavior, *e.g.* randomly open and  
20 close windows and programs. The Defect can also cause total system failure.  
21

22 185. Defendant Sony should have had knowledge of the Defect and was in  
23 fact informed about the Defect from the numerous consumer complaints relating to  
24 the VAIO Notebooks Sony manufactured.

25 186. Plaintiff Egner and class members were not aware of the defect at the  
26 time of sale.  
27

28 187. Sony failed to tell consumers about the Defect, even after receiving

1 numerous consumer complaints the Sony VAIO Notebook trackpads were  
2 malfunctioning. Despite this knowledge, Sony continued to place defective Sony  
3 VAIO Notebooks into the stream of commerce.

4  
5 188. Had plaintiff Egner and class members known the Sony VAIO  
6 Notebooks were defective, they would not have purchased them because the  
7 existence of the defect was a material fact to the transaction. Defendant Sony, at all  
8 relevant times, knew or should have known plaintiff Egner and class members did  
9 not know or could not have reasonably discovered the defect prior to their  
10 purchases.

11  
12 189. By paying monies for these defective Sony VAIO Notebooks, plaintiff  
13 Egner and class members have suffered an ascertainable loss.

14 190. The conduct by Sony constitutes a violation of New Jersey's Consumer  
15 Fraud Act and entitles plaintiff and class members to relief under this statute of  
16 statutory and actual damages, injunctive relief, and attorneys' fees and costs.

## 17 18 **COUNT TEN**

### 19 **Violation of The Florida Deceptive And Unfair Trade Practices Act**

#### 20 **Florida Statutes §§ 501.201 *et seq.***

#### 21 **(against defendant Sony)**

22 191. Plaintiff Flynn incorporate by reference ¶¶ 1-190 as though fully set  
23 forth and alleged herein.

24 192. Plaintiff Flynn asserts this count individually and on behalf of a  
25 proposed class.

26 193. This count is brought against defendant Sony pursuant to the Florida  
27 Deceptive and Unfair Trade Practices Act, Section 501.201 *et seq.*, Florida Statutes  
28

1 (“FDUPTA”).

2 194. At all times relevant herein, FDUPTA was in effect. Florida law  
3 prohibits any unfair methods of competition, unconscionable acts or practices, and  
4 unfair or deceptive acts or practices in the conduct of any trade or commerce.  
5

6 195. Plaintiff Flynn and other class members are “consumers” as the term  
7 is defined in Fla. Stat. § 501.203(7).

8 196. Plaintiff Flynn and other class members are “persons” as the term is  
9 used in Florida Stat. § 501.211, and as the term is defined in Florida Stat. § 1.01(3).  
10

11 197. Plaintiff Flynn and class members reasonably expected their Sony  
12 VAIO Notebooks to last well beyond the one-year period included in the warranty.  
13 Yet the defective VAIO Notebooks failed within mere weeks of purchase.

14 198. Sony developed, manufactured, marketed and sold the defective Sony  
15 VAIO Notebooks.  
16

17 199. Sony had knowledge of the design defect at all relevant times as a  
18 result of numerous consumer complaints and warranty claims relating to the failing  
19 trackpads and total system failures.

20 200. In addition, defendant Sony had actual knowledge as a result of their  
21 design and testing certain of the defective Sony VAIO Notebooks, and plaintiffs  
22 allege Sony employees and technicians themselves witnessed the defective  
23 trackpads.  
24

25 201. Sony failed to disclose to plaintiffs and to class members the Sony  
26 VAIO Notebooks were defective and would prematurely fail. Defendants’ failure to  
27 disclose this information constituted a violation of FDUTPA.  
28

1           202. Moreover, had plaintiff Flynn and class members known the Sony  
2 VAOIO Notebooks were defective, they would not have purchased them, because the  
3 existence of the defect was a material fact to the transaction.  
4

5           203. By paying monies for the defective Sony VAOIO Notebooks, plaintiffs  
6 and class members have suffered an ascertainable loss.

7           204. Sony's violation of FDUPTA entitles plaintiff Flynn and class members  
8 to statutory and actual damages, injunctive relief, and attorneys' fees and costs.  
9

10                           **PRAYER FOR RELIEF**

11           WHEREFORE, plaintiffs, individually and on the class's behalf, pray for  
12 judgment against defendant as follows:

13           A.     an order certifying the plaintiff class and appointing plaintiffs and  
14 their counsel to represent the class;

15           B.     an order enjoining Sony and Best Buy from continuing to engage in  
16 unlawful or unfair business practices;

17           C.     an award of actual, consequential, and punitive damages and/or  
18 rescission, as authorized by law;

19           D.     an order requiring Sony and Best Buy to disgorge all ill-gotten gains  
20 and to pay restitution to plaintiffs and the class consisting of all funds acquired by  
21 means of any business act or practice declared unlawful or unfair by the Court;  
22

23           E.     defendants pay prejudgment and post judgment interest, as authorized  
24 by law;  
25

26           F.     defendants pay reasonable attorney fees and costs of suit; and

27           G.     all other relief the Court deems appropriate.  
28



**DEMAND FOR JURY TRIAL**

Plaintiffs and class members demand trial by jury on all issues so triable.

DATED: March 22, 2010

**s/ John Lowther, Esq.**

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*Interim co-lead counsel for plaintiffs  
and the proposed class*

**Affidavit of John Lowther re Venue for CLRA count**

I, John Lowther, am an attorney admitted to practice before this Court and I am counsel of record for plaintiffs in the above-captioned matter. I make this affidavit pursuant to California Civil Code § 1780(c). Venue is proper in this District based on filings with the California Secretary of State, which I reviewed, because Sony Electronics, Inc., has its principal place of business in this District at 16530 Via Esprillo, San Diego, California and is doing business in this District. I declare under penalty of perjury under the laws of the United States of America the above is true and correct and of my own personal knowledge.

**s/ John Lowther, Esq.**

Attorney for plaintiffs  
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